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No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1994

KAREN R. LUNDE,

Petitioner,

vs.

CHARLES M. HELMS, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF IN OPPOSITION

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COUNTER STATEMENT OF QUESTIONS PRESENTED

1. IS REVIEW FOR ABUSE OF DISCRETION REVERSIBLE, WHEN THE RESULT ON THE ISSUE OF JUDICIAL RECUSAL WOULD HAVE BEEN THE SAME, IF REVIEWED DE NOVO?

2. IS PLAINTIFF ENTITLED TO A FEDERAL TRIAL, EITHER JURY OR BENCH, AFTER FULLY LITIGATING HER FEDERAL CLAIMS IN STATE COURT, AND DENIED REVIEW IN THIS COURT?

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BRIEF IN OPPOSITION

The Respondents Charles M. Helms, John W. Eckstein, the University of Iowa College of Medicine, University of Iowa President Hunter R. Rawlings III, Registrar Jerald W. Dallam, and the State University of Iowa respectfully oppose the Petition for Writ of Certiorari to review the opinion and judgment of the United States Court of Appeals for the Eighth Circuit entered in this case on August 15, 1994.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is included as an appendix to the petition and has been published as *Lunde v. Helms*, 29 F.3d 367 (8th Cir. 1994). In addition, the unreported decision of the Iowa District Court on April 12, 1991, is included in the appendix to this brief in opposition.

STATEMENT OF THE CASE

This case was originally brought pursuant to 42 U.S.C. § 1983 alleging violations of the Petitioner's rights under the First and Fourteenth Amendments to the United States Constitution, 20 U.S.C. § 1681, and Iowa Code chapter 17A, the Iowa Administrative Procedures Act. Petitioner claimed her dismissal from medical school for academic reasons violated her rights to freedom of speech, due process and equal protection, and denied her a "contested case proceeding," pursuant to state law. The Petitioner initially sought declaratory and injunctive relief.

The facts have been set forth in detail in the trial court opinion attached to this brief in opposition. (Resp. App. p. 1.) As described, this litigation began when the University Committee on Student Promotions scheduled an appearance for the Petitioner before the Committee on February 13, 1989, to review her academic performance. On February 15, 1989, Petitioner filed her original complaint in the federal district court. Petitioner appealed the decision to dismiss her to the Executive Committee of the Medical Council, the vice president of Academic Affairs

and ultimately to the governing body, Iowa State Board of Regents. On August 31, 1989, the federal district court stayed further proceedings pending the outcome of administrative and state judicial proceedings concerning Petitioner's challenge to her dismissal. On September 21, 1989, the Board of Regents denied Petitioner's appeal.

On October 25, 1989, Petitioner filed a Petition for Judicial Review of the Regents' decision in the Iowa District Court. Although the Petitioner asserted a reservation of federal claims for later litigation in federal court, she vigorously litigated all of her federal claims in the Iowa court. On February 25, 1991, through March 4, 1991, trial was held and on April 12, 1991, the Iowa district court concluded that Petitioner's rights to freedom of speech, due process, and equal protection were without merit, and she was not the victim of sex discrimination. (Resp. App. p. 1.)

In response to Petitioner's motion for new trial, the Iowa district court reiterated on April 30, 1991, that the claims of sex discrimination, freedom of speech, due process and equal protection had no factual basis and played no role in Petitioner's dismissal. Petitioner appealed the state court decision asserting error in failing to find her dismissal was in violation of her federal rights. On March 24, 1992, the Iowa Court of Appeals rejected each of the federal grounds raised by the Petitioner and affirmed the decision of the Iowa district court.

On April 11, 1992, Petitioner filed an application for further review of the decision of the Iowa Court of Appeals with the Iowa Supreme Court. That application

again raised all of the alleged violations of federal constitutional and statutory rights, and was on May 28, 1992, denied.

On August 27, 1992, Ms. Lunde filed a Petition for Writ of Certiorari in this Court, asserting once again her federal claims (S. Ct. No. 92-365). In her petition, Petitioner listed due process, equal protection, free speech, and sex discrimination among her issues (Petition for Writ, No. 92-365, p. iii). On October 19, 1992, this Court denied her petition for writ. (___ U.S. ___, 113 S. Ct. 377, 121 L. Ed. 2d 288.)

Petitioner then returned to her federal action, and on December 8, 1992, moved for the recusal of the Honorable Charles R. Wolle. On the same date, she filed her Amended Complaint which sought damages and for the first time, a jury trial. These Respondents filed their motion for summary judgment on April 8, 1993, asserting issue preclusion. On July 2, 1993, the district court denied the request for recusal and entered summary judgment for the Defendants.

Petitioner appealed to the Eighth Circuit, which court affirmed the district court on July 6, 1994. Petition for rehearing was denied on August 15, 1994 (Pet. App. 2, 20).

REASONS FOR DENYING THE WRIT

I. THERE ARE NO SPECIAL AND IMPORTANT REASONS IN THIS CASE TO GRANT CERTIORARI TO REVIEW A JUDICIAL RECUSAL DECISION.

The petition for certiorari raises no important issue which needs to be resolved by this Court. In purported compliance with Supreme Court Rule 10, Petitioner Lunde asserts the Eighth Circuit decision is "in conflict with the decision of another United States Court of Appeals." The conflict between the Fourth Circuit and the Eighth is on the standard for reviewing district court decisions on recusal. *See People Helpers Foundation v. Richmond, Virginia,* 12 F.3d 1321, 1325 (4th Cir. 1993) (de novo); *Lunde v. Helms,* 29 F.3d 367, 370 (8th Cir. 1994) (abuse of discretion) (Pet. App. 12).

Petitioner Lunde asserts that this Court has determined the standard for review of questions of judicial bias is de novo or alternatively this Court has yet to clearly delineate the proper standard. (Petition pp. 38-39.) The question presented by Petitioner is simply whether the Eighth Circuit standard for review is correct.

Rule 10 describes the grant of certiorari as discretionary. Not only must there be a conflict among the circuits, but "special and important reasons" must also exist. Petitioner's issue is neither important nor recurring. *See Shapiro v. United States,* 335 U.S. 1, 4 (1948); *Fuller v. Oregon,* 417 U.S. 40, 42 (1974). Respondent would suggest that resolution of the distinction between de novo and abuse of discretion standards is not a "most troublesome question in the administration of justice." *Linkletter v. Walker,*

381 U.S. 618, 620 (1965). Given the facts of this case, there is no significant federal question to be resolved.

II. THE STANDARD OF REVIEW OF THE DISTRICT COURT'S DENIAL OF A REQUEST FOR RECUSAL IS NOT DETERMINATIVE OF THE COURT'S DECISION. THE RESULT WOULD BE THE SAME.

Lunde alleged that because Judge Wolle, as a graduate of the University of Iowa, made contributions to the University of Iowa Law Foundation, he had a "financial interest" in the outcome of this litigation as that term is defined in 28 U.S.C. § 455(b)(4). Alumni contributions do not constitute sufficient entanglement to make Judge Wolle an "active participant" in the affairs of the University of Iowa. Contrary to Lunde's assertions, it is not necessary to even discuss the exceptions to the rule. Judge Wolle was neither a board of trustee member (*see Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988)), nor as a mere graduate and donor did he have an interest that would be substantially affected by the outcome of the lawsuit. ["Even a substantial judgment against the University would have no financial impact on the district judge . . . " *See Lunde v. Helms*, 29 F.3d at 371 (Pet. App. 14).]

It is apparent from a review of the Eighth Circuit opinion (Pet. App. 13) that whatever standard for review is utilized, the decision of the Circuit was correct. Judge Wolle's impartiality could not reasonably be questioned absent any evidence that the judge was privy to any extra-judicial information. *Easley v. University of Michigan*

Board of Regents, 906 F.2d 1143 (6th Cir. 1990), cert. den., 499 U.S. 947 (1991); *Brody v. President of Harvard College*, 664 F.2d 10, 11 (1st Cir. 1981). Were certiorari to be granted, so that this Court might resolve the asserted conflict, the decision as to Petitioner Lunde would remain the same. The resolution of the conflict will not change the result. Certiorari should be denied. *Sommerville v. United States*, 376 U.S. 909 (1964).

As a separate and independent ground, the motion to recuse could have and should have been denied as untimely. (Pet. App. 12; citing *Willner v. University of Kansas*, 848 F.2d 1023 (10th Cir. 1988), cert. den., 488 U.S. 1031 (1989). However, both the district court and the Eighth Circuit did not rely on this ground and denied the motion on the merits.

III. PETITIONER UNRESERVEDLY LITIGATED HER FEDERAL CLAIMS IN THE STATE COURT AND SOUGHT REVIEW OF THE ADVERSE DECISION IN THIS COURT. THE DECISION TO DENY HER REQUEST TO START OVER AGAIN WITH A JURY TRIAL WAS CORRECT.

The district court stayed the proceedings in this case because of ongoing state litigation in which there was an adequate opportunity to raise constitutional challenges. Petitioner Lunde appealed and the Eighth Circuit affirmed the entry of the stay. *Lunde v. Helms*, 898 F.2d 1343, 1345 (8th Cir. 1990).

The administrative proceedings at the College of Medicine had already begun when Lunde filed her federal complaint. The district court decision unquestionably

demonstrates that judicial review afforded Lunde a full and fair opportunity to litigate each and every federal claim. She raised each of those claims and each was decided adversely to her. Lunde thereafter took advantage of the opportunity to seek review of the state court's decision in this Court. (No. 92-365) Lunde's request for certiorari review of her federal claims was denied. ___ U.S. ___, 113 S. Ct. 377, 121 L. Ed. 2d 288.

Following that denial, Respondents collectively filed a motion for summary judgment alleging issue preclusion. Lunde responded in the federal district court, as she does here, by arguing that she had reserved her federal claims and because of her amended complaint she was entitled to a jury. Summary judgment was granted because all of the federal claims raised by the Petitioner had been addressed by the Iowa courts and Lunde had had a full and fair opportunity to litigate those claims.

Lunde's petition alleges denial of her constitutional right to a jury trial. The allegation is frivolous. Lunde suggests that under *England v. Louisiana Medical Examiners* she appropriately reserved her right to a federal determination of her federal claims. 375 U.S. 411, 418-419 (1964). *England* itself dictates the results of this petition.

> But we see no reason why a party, after unreservedly litigating his federal claims in the state courts although not required to do so, should be allowed to ignore the adverse state decision and start all over again in the District Court. . . . We now explicitly hold that if a party freely and without reservations submits his federal claims for decision by the state courts, litigates them there, and has them decided there, then –

> whether or not he seeks direct review of the state decision in this Court – he has elected to forego his right to return to the District Court.

England v. Louisiana Medical Examiners, 375 U.S. at 419.

Although it is true that Lunde attempted an *England* "reservation of rights", it is clear from the history of this case that her reservation was intended only as an escape route should the state courts render an adverse ruling. She vigorously asserted her federal claims in state trial court, on appeal to the state supreme court, and on petition for certiorari to this Court. This is precisely the situation in which issue preclusion was held to apply in *England*.

Lunde's belated claim of a constitutional right to a jury trial is of no consequence to the resolution of her litigation. As the district court determined: "she is not entitled to a jury trial or a bench trial." Her action is barred by issue preclusion. The Seventh Amendment is not violated by granting a motion for summary judgment on issue preclusion grounds. *Parklane Hosiery Company, Inc. v. Shore*, 439 U.S. 322 (1979).

"Lunde fully and vigorously litigated her sex discrimination, First Amendment, due process, and equal protection claims in state court. The state court judgment was a final judgment on the merits rendered by a court of competent jurisdiction." *Lunde v. Helms, et al.* (Pet. App. 19). She has had her day in court; she's not entitled to another.

CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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IN THE DISTRICT COURT OF IOWA
IN AND FOR POLK COUNTY

KAREN R. LUNDE, Petitioner, v. STATE BOARD OF REGENTS, Respondent.	:	CASE NO. AA 1583 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER (Filed Apr. 12, 1991)

On February 25, 1991, the above-captioned matter came on for trial to the Court. Petitioner appeared in person and by her attorney, Paul D. Lunde. Respondent appeared by its attorney, John M. Parmeter. Trial continued through March 4, 1991; the parties were given until March 22, 1991 to submit any post-trial briefs or arguments which they wished the Court to consider. The matter was deemed submitted on March 22, 1991. After hearing the testimony of the witnesses, reviewing the exhibits admitted into evidence and the court file (including the post-trial briefs), and being fully advised in the premises, the Court now enters the following ruling.

Petitioner filed this action in pursuit of her appeal of her dismissal from the University of Iowa Medical School in 1989. Petitioner has raised several claims in contesting her dismissal. First, she alleges that she was improperly denied contested case treatment in proceedings below, from the actions of the Student Promotions Committee through the Board of Regents' denial of her appeal.

Respondent agrees that petitioner's challenge to her dismissal was not treated as a contested case, but argues that petitioner was not entitled to contested case treatment. This Court has previously ruled, on September 12, 1990, that petitioner was not entitled to proceedings below as a contested case. However, this Court further ruled that because it viewed this proceeding as one involving "other agency action," petitioner would be allowed to make a full factual record at the time of the February 25, 1991 hearing concerning all of her claims.

Aside from her claim that she was entitled to contested case treatment, petitioner argues that her dismissal from the medical school was improper because the reasons stated were without factual basis, and because in fact her dismissal was caused by petitioner's exercise of her rights to freedom of speech and by discrimination on the basis of sex. Petitioner further contends that she was denied equal protection because no other medical students in her class, having passed all the courses required for third-year students, were dismissed from the medical school despite the passing performance. Petitioner has asked the Court to set aside her dismissal, reinstate her to the medical school, and for further relief, all in the context of this action.

Karen Lunde was began [sic] as a student to the University of Iowa College of Medicine in the fall of 1985. Prior to that time, she had an excellent academic and personal background. She had graduated from the University of Iowa undergraduate program in the spring of 1985 with a degree in biomedical engineering with highest distinction. Petitioner was one of the youngest, if not the youngest, members of her medical school class,

having in effect skipped two years of school between kindergarten and 12th grade.

During her first two years of medical school, Karen received passing grades in all of her courses. However, her passage through these two years was not unremarkable to the faculty. Various professors brought petitioner to the attention of Associate Dean Aschenbrener because of problems the professors perceived Karen had in interacting with her peers, and because of grades they viewed as only marginally passing. At one point Dean Aschenbrener suggested the possibility of a leave of absence for Karen, in order for her to work on developing her interactional skills. However, Karen's mother strenuously objected to such a leave, and Karen proceeded to her second year of medical school.

During her second year, Karen once again came to the attention of Dean Aschenbrener because it was noted that she was frequently sleeping in classes. Indeed, petitioner underwent a sleep disorder evaluation as a result of faculty concerns, but no physical cause for Karen's sleeping in class was identified. There was continued concern about Karen's ability to interact with others. During both the first and second years of medical school, concerns were raised by faculty members as to grades they viewed as only marginally passing. Nevertheless, Karen began her third year of medical school.

The third and fourth years of medical school are significantly different from the first two years in that the students spend all of their time on clinical rotations. While the students still take written examinations at the end of each rotation, the grades they receive are no

longer based upon the objective results of the written examinations but are also based in large part upon the subjective evaluations made by the professors and residents with whom the student comes in contact during the rotation. The medical student takes the courses in no particular order, varying from student to student, but is involved in only one subject at a time. Except for the course entitled Introduction to Clinical Medicine taken during the second semester of the second year, the program for third and fourth year medical students is quite different than their prior experience in medical school.

Upon beginning her third year, petitioner almost immediately ran into difficulty, receiving a marginal pass in her first rotation (orthopedic surgery). While petitioner disputes the ability of the medical school to consider the "marginal pass," arguing that the final grade is only "pass" or "fail," it is clear that the faculty, and specifically the Student Promotions Committee, is entitled to look at a student's entire academic record in determining whether the student should advance and eventually receive her degree. *See, e.g., Nichols v. McDonald,* 751 F.Supp. 811, 813 (S.D. Iowa 1990).

Petitioner later failed the obstetrics and gynecology, urology and neurology rotations. In each case, the problem was not with the written examinations in the courses, in which petitioner continued to do well. Rather, the concerns raised regarding petitioner by her professors and the residents with whom she dealt related to more subjective areas. Specifically, problems were noted of (1) loud and sometimes inappropriate remarks in the clinical setting; (2) inappropriate behavior; (3) talking and reprimanding herself out loud; (4) difficulty prioritizing

patient-clinical concerns; (5) difficulty approaching patients with difficult problems; (6) difficulty distinguishing relevant from irrelevant clinical information in synthesizing the patient's history; (7) repeatedly falling asleep; and (8) difficulty in relating verbally to peers and staff.

As a result of the foregoing concerns, Karen was brought before the Committee on Student Promotions for a complete review of her medical school performance. As a result of that review, the Committee recommended that petitioner not be registered in the College of Medicine during the spring 1988 semester. The Committee further recommended that Karen provide the Committee with a current medical evaluation for the sleep disorder, and that she continue with counseling. The Medical Council, which is the body empowered to enforce requirements for students to remain in good standing, approved the recommendation that Karen should not be registered in the spring 1988 semester, and that she provide a current medical and psychiatric evaluation. Karen did in fact then leave school for one semester, and pursuant to school policy re-commenced here [sic] M3 year in June, 1988.

During the interim, petitioner underwent counseling with Margaret Koch. Her recollection of the events surrounding counseling is that Ms. Koch advised her to dress and act more femininely in the future to avoid criticism by medical school faculty members. Petitioner testified that when she first returned to medical school she followed this advice and consequently passed the clinical obstetrics and gynecology rotation, which she had failed the first time. Karen attributes her pass the second time solely to the fact she was dressing and acting more

femininely. She further testified, however, that she was unable to continue with the "act" of being so feminine, as it was not really her personality. Karen asserts that once she reverted to less feminine behavior and dress, she began to have problems once again.

The Student Promotions Committee reviewed the academic performance of petitioner on August 23, 1988; November 9, 1988; December 22, 1988 and January 11, 1989. Following the meeting of January 11, 1989, the Committee recommended the cancellation of petitioner's registration. After some concern was raised concerning whether the petitioner had received adequate notice of the January, 1989 Committee meeting, petitioner was allowed to appear before the Committee on February 13, 1989. The Committee continued with its earlier recommendation, which was adopted by the Medical Council on February 16, 1989. This appeal then followed, winding its way through the Medical Council, the Executive Committee, the Vice-President of Academic Affairs, and ultimately to the State Board of Regents. Petitioner is now challenging the decision of the Board of Regents.

As set forth above, Karen's concerns about the counsel she believes she received from Ms. Koch to dress and act more femininely, and the consequent effects of her perceived following and then disregard of Ms. Koch's advice form a significant part of petitioner's claim of sexual discrimination. In further support of her claim, petitioner points to references in her evaluations to her being "aggressive", as well as to comments concerning petitioner's dress. There are a significant number of such comments in the evaluations.

Plaintiff cites *Price Waterhouse v. Hopkins*, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989) in support of her position that she has been the victim of discrimination on the basis of sex, as evidenced by the use of the descriptive term "aggressive." Specifically, petitioner argues that she has been the victim of sex stereotyping, and apparently refers to the following language in *Price Waterhouse*:

> In the specific context of sex stereotyping, an employer who acts on the basis of a belief that a woman cannot be aggressive or that she must not be, has acted on the basis of gender. . . . An employer who objects to aggressiveness in women but whose positions require this trait places women in an intolerable and impermissible Catch-22: out of a job if they behave aggressively and out of job if they don't. Title VII lifts women out of this bind. *Price Waterhouse*, 109 S.Ct. at 1790-91.

The Court assumes for purposes of its decision that the Price Waterhouse analysis applies to the University of Iowa College of Medicine, and its treatment of students, although the situation is obviously not an employer-employee situation.

The legal standard to be applied to petitioner's claims of discrimination on the basis of sex, violation of her rights to freedom of speech, and denial of equal protection is not clear. Respondent argues that the Court should apply the traditional analysis used in administrative appeal cases and simply decide whether there is substantial evidence to support petitioner's dismissal from medical school. However, petitioner urges the Court to apply traditional civil rights analysis, such as that set

forth in *Price Waterhouse,* especially since petitioner argues that she was denied the opportunity to make a full factual record below concerning her claims of sex discrimination, denial of freedom of speech, and denial of equal protection. Based upon its view of the evidence in this case, the Court concludes that it makes no difference what analysis is used in making its determination. In any event, petitioner's dismissal from medical school must be upheld.

The problem with petitioner's claims of discrimination on the basis of sex is not the legal basis for her claims, but the factual basis. While there is certainly evidence that critical comments were made concerning petitioner's dress and aggressiveness, there is *no* evidence to support the proposition that a different standard was applied to male and female students, in that aggressiveness was encouraged in male students but not in female students. From all the evidence adduced at trial, it is clear that doctors of all kinds, regardless of race, sex or other criteria, are expected to be aggressive in caring for their patients and treating their medical problems. However, they are also expected to be professional in their dealings with patients, staff and peers. It is clear to the Court that the context of comments in the evaluations concerning petitioner's aggressiveness were made in the sense of professionalism, that is that petitioner was failing to act in a manner appropriate to any and all physicians. Such a criterion is not only not improper, but is laudable and certainly a legitimate goal for the medical school faculty to seek in its graduates.

Petitioner's argument that she was dismissed from the medical school as a consequence of exercising her

rights to freedom of speech is also without factual basis. There is simply no question that petitioner's difficulties stemmed not from, for example, expressing political views or stating medical opinions contrary to her professors. Rather, as was apparent from the testimony of Dr. Healy, the problems arose because petitioner's speech and conduct was disruptive of the academic process. The Court must note that petitioner's conduct during the course of the six-day trial was further evidence in support of respondent's view of the facts underlying the present dispute. There were several instances during the proceedings, even during the testimony of other witnesses, when petitioner was loud and disruptive of the court proceedings. The point is not that the Court was offended by such conduct, or considered it contemptuous, but rather that the conduct was inappropriate for someone of petitioner's age, experience and desired profession.

Respondent correctly points out that while students enjoy the right of freedom of speech, that right is not unlimited. *Tinker v. Des Moines Community School District*, 393 U.S. 503, 89 S.Ct. 733, 21 L.Ed.2d 731, 738 (1969). The Court concludes that in this case the College of Medicine in no way inappropriately acted against petitioner as a consequence of her exercising free speech rights. Once again, the sole purpose of the comments made and actions taken by the medical school was to matriculate a first class medical professional person, who could deal with patients, staff and peers in an appropriate manner.

Petitioner's final argument is that she was denied equal protection because she was the only person in her class who "passed" all of her M3 classes and yet was not

permitted to proceed on to the M4 year. The Court has substantial question as to whether the class petitioner alleges, namely those medical students who were to graduate in 1989 and 1990, is the appropriate class to consider; petitioner's classification appears unduly restrictive. However, the Court concludes that no denial of equal protection has occurred in any event.

It is clear from the record evidence that the Student Promotions Committee is vested with great authority and discretion in determining whether a student should advance to the next level within the medical school and ultimately to graduate. Certainly, that authority is not unlimited, as it is subject to review by the Medical Council in every instance and also to the appeal process as has occurred here. Nevertheless, the Student Promotions Committee must have such authority and discretion if the University of Iowa College of Medicine is to be an effective academic institution. *See Nichols v. McDonald*, 751 F.Supp. 811, 814-15 (S.D.Iowa 1990).

Here the Student Promotions Committee was faced with a number of concerns regarding petitioner, which were valid concerns as set forth above. These concerns existed regardless of the fact that petitioner had received a grade of "pass" in each of her M3 courses. There was and is substantial evidence to support the conclusion of the Student Promotions Committee, and the affirmation of that conclusion by the Medical Council and subsequent appeal process. The Court cannot on this record conclude that the decision made was arbitrary and capricious. Indeed, it is apparent that the Student Promotions Committee made the decision regarding petitioner only with

reluctance and after careful and considerable deliberation.

One of the first witnesses called by petitioner was Dr. Jean Jew, a professor of anatomy at the University of Iowa College of Medicine. Petitioner asked the Court to take judicial notice of the recent lawsuit which Dr. Jew successfully prosecuted against the College of Medicine. Dr. Jew was coincidentally one of the five members of the Student Promotions Committee which voted unanimously to dismiss petitioner from the College of Medicine. While the facts underlying Dr. Jew's claim of sexual harassment are arguably quite different than the claims being made by petitioner, it is obvious that if anyone would have been sensitive to sexually discriminatory criteria being applied to a female student, it would be Dr. Jew. In fact, Dr. Jew testified that she scrutinized petitioner's records and evaluations to be certain in her own mind that sex discrimination was not a factor. Dr. Jew concluded that in petitioner's case only valid academic criteria were being applied. This Court reaches the same conclusion, and considers the testimony of Dr. Jew to be particularly persuasive in support of the determination reached by the College of Medicine to dismiss petitioner.

For all of the foregoing reasons, the decision of the respondent is hereby AFFIRMED.

Dated this 11th day of April, 1994.

/s/ Robert A. Hutchinson
Robert A. Hutchinson, Judge
Fifth Judicial District of Iowa